

IN THE HIGH COURT OF DELHI AT NEW DELHI

Bail Application No.90/2007

Vijay Kumar Petitioner
! through: Mr. K.B.Andley, Sr. Adv. with
Mr. K.K.Datta, Advocate

VERSUS

\$ State Respondent
^ through: Mr. Jaideep Malik, Advocate

% **DATE OF DECISION:** 11-10-2007

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

FIR No.423/06 dated 03.08.2006
under Section 20 of the NDPS Act
PS Patel Nagar.

1. Petitioner Vijay Kumar who is in judicial custody since 3.8.2006 and is facing trial for the charge that on 3.8.2006 at about 6.45 pm he was found in unlawful possession of 15.7 Kg of ganja, thereby committing an offence under Section 20 of the NDPS Act seeks bail in the instant case.
2. It is urged by learned counsel for the petitioner that the quantity recovered is less than commercial quantity. As per

the statute the commercial quantity is 20 Kg. It is urged that there is a difference in the weight of the samples as stated to be sealed at the time of seizure and the quantity received by CFSL. It is urged that the seizure is dated 3.8.2006 but samples were sent for analysis on 28.9.2006. Therefrom, it is urged that the samples have been tampered with. It is further urged that the stated recovery is from a public place near Patel Nagar Railway Station and no public witness has been involved. This is stated to be casting a doubt on the case of the prosecution. Lastly it is urged that in the malkhana register, Ex.PW-2/A, deposit of the FSL Form in the malkhana has not been recorded. Further, in the road certificate, Ex.PW-2/D, while showing the dispatch of the sealed samples marked A-1 to A-4, dispatch of the FSL Form is not recorded. It is further urged that as per the testimony of PW-2, HC Yogesh Kumar, the person posted at the malkhana when samples and seized material was deposited, all articles were sealed with the seals of 'JT' & 'AJS' but the report of the FSL records that the 4 parcels which were received i.e. Ex.A-1 to Ex.A-4 as per road certificate had seals embossed 'JT' & 'AJT' thereon. In this connection it is further pointed out that in the malkhana register in relation to the deposits, name of police personnel effecting the seizure was not recorded save and except the entry pertaining to deposit of the seized material in the instant case.

Taking this argument a little further, it has been pointed out that PW-2 has admitted in cross-examination that entry in circle in mark X in Ex.PW-2/A recording deposit by Inspector A.S.Bajwa appears to be in a different ink vis-a-vis rest of the entry in Ex.PW-2/A.

3. Opposing the application learned counsel for the State explains that difference in quantity of the weight in the samples which were noted by the FSL vis-a-vis the measurement recorded at the time of seizure and separation for purposes of preparing the sample at the time of seizure is 1 gram, 12 grams, 16 grams and 18 grams respectively in the 4 samples. It is explained that ganja being a vegetable product has moisture and moisture content decreases with passage of time. In respect of delay in sending the samples for FSL analysis it is explained that due to paucity of place the laboratory indicated the date on which the samples have to be sent. Based on prioritization these dates are intimated. In the instant case when the green signal was received from the FSL, samples were sent. In respect of not associating any public witness, learned counsel for the State explains that public apathy towards involvement in an criminal investigation is the facet of modern day of life. But that does not mean that police officers cannot and should not be believed. In respect of the discrepancy in the official record pertaining to FSL Form being or

not being deposited in the malkhana, learned counsel points out that in the FSL report it has been mentioned that the 4 samples were received along with the FSL Form. Counsel urges that this discrepancy could be explained by the investigating officer. Thus, counsel states that at this stage it cannot be said that the case of the prosecution has fallen and counsel closes the application for bail.

4. In my opinion what is relevant to be noted at this stage is that in the FSL Form reference to the seals on the sealed parcels sent for FSL analysis is 'JT' & 'AJT' whereas as per the testimony of PW-2 and as recorded in Ex.PW-2/A the material deposited in the malkhana bore the seal 'JT' & 'AJS'. Further, admission of PW-2, the malkhana in-charge, that in the malkhana register entry Ex.PW-2/A, portion Mark X appear to be in a different ink vis-a-vis the rest of the entry creates a prima facie suspicion of something being amiss. It is in this context the issue of non-deposit of the FSL Form in the malkhana and no mention thereof in the road certificate Ex.PW-2/D cannot be brushed aside lightly.

5. Noting that trial has yet to conclude and investigating officer has yet to be examined, in my opinion case is made out for release of the petitioner on bail.

6. I dispose of the petition directing that the petitioner be

released on bail by the learned Trial Judge on the petitioner furnishing a personal bond in sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the learned Trial Judge in the afore-noted FIR.

7. Dasti.

October 11, 2007
dk

PRADEEP NANDRAJOG, J.